

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

STAFFORD REGIONAL AIRPORT AUTHORITY

FOR

STAFFORD REGIONAL AIRPORT CONSTRUCTION PROJECT
(VPDES PERMIT NO. VAR101688)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code ' ' 62.1-44.15(8a and 8d) and 10.1-1185 between the State Water Control Board and the Stafford Regional Airport Authority regarding the Stafford Regional Airport Construction Project for the purpose of resolving certain alleged violations of the State Water Control Law and Regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code ' ' 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in ' 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "Airport Authority" means the Stafford Regional Airport Authority.
7. "Airport" means Stafford Regional Airport.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "SWPP" means Storm Water Pollution Prevention Plan.
10. "VPDES General Permit" means Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Storm Water from Construction Activities, Permit No. VAR101688.

SECTION C: Finding of Facts and Conclusions of Law

1. The Airport Authority began construction of Phase I of the Stafford County Airport (Airport Project) in the summer of 1998. The entire Airport Project consisted of four phases and encompassed approximately 550 acres.
2. As a result of citizen complaints for odor and possible water impacts, DEQ conducted site inspections in April, July, September and December 2002, that indicated that the Airport Authority constructed the Airport Project without obtaining coverage under the VPDES General Permit.
3. DEQ contacted the Airport Authority representatives in October and November 2001 concerning submittal of a Registration Statement for coverage under the VPDES General Permit. Despite subsequent conversations and correspondence with the Airport Authority staff, consultants, and engineering consultants, the Airport Authority failed to submit a Registration Statement for coverage under the VPDES General Permit.
4. DEQ sent a letter to the Airport Authority consultants on May 28, 2002, again requesting that the Airport Authority submit the necessary documentation to register under the General Permit. DEQ received a Registration Statement from the Airport Authority on October 31, 2002, and registered the Airport Authority under the VPDES General Permit on November 13, 2002. The Airport Authority completed Phase IV construction of the Airport Project in the spring of 2001 which primarily involved the paving operations of the airfield pavements. The Airport opened in December 2001.
5. The 2002 site inspections also revealed that substantial erosion had occurred at the Airport site and that the erosion may have had significant off-site impacts to an unnamed tributary of Reedy Branch and to Reedy Branch, both tributaries of Potomac Creek. Based on a

recent site assessment by DEQ's Water Planning and Monitoring Resources Department, it appears that any off-site impacts that may have occurred have been mitigated by the stabilization of the bare areas and the ongoing repairs to the stormwater management structures.

6. Based on the site inspections and subsequent meetings with the Airport Authority, DEQ issued the Airport Authority Notice of Violation (NOV) No. 2002-10-N-001 on October 7, 2002, for failure to register for coverage under the VPDES General Permit for storm water discharges, unpermitted discharges into state waters, and failure to report the discharge. DEQ also noted in this NOV that substantial erosion and wetland area impacts had occurred.
7. After a meeting and follow up on-site inspection by VWP staff on November 13, 2002, DEQ confirmed the unauthorized filling of approximately 1.1 acres of wetland with silt to a depth of approximately 12-to-18 inches above the original wetland substrate. DEQ has no record of the Airport Authority obtaining a VWP Permit authorizing the wetland impacts. The wetland is identified as a palustrine emergent (PEM) wetland, which by definition is a wetland with characteristics ranging from, saturated soils with grass-like plants such as sedges and rushes to ponded water with fleshy plants such as water lilies and cattails. PEMs are often referred to as marshes, swamps, or bogs.
8. On December 19, 2002, DEQ issued NOV No. 02-12-NVRO-0006 to Stafford Regional Airport for unauthorized filling of wetlands.
9. In follow up on-site visits and meetings held in November and December 2002, DEQ and the Airport Authority reviewed documentation, discussed compliance issues, and identified problem areas to be addressed. The Airport Authority states that they believe that a large amount of rainfall from Hurricanes in September 1999, sulfidic soil conditions and drought conditions contributed to the erosion and sediment problems at the site.
10. Since the follow-up meetings, the Airport Authority has begun to repair and or correct the eroded areas. The Airport Authority states that it continues to make a good faith effort to comply although a small budget, limited resources, and heavy reliance on outside funding from other governmental agencies impeded their ability to prevent and or remediate the impacts.
11. Appendix A of this Order requires that the Airport Authority stabilize the slopes, correct the eroded areas, stabilize and repair drainage structures, dikes, and basins, revise the SWPP Plan, submit a Joint Permit Application, and mitigate the wetland impacts in accordance with the terms of the Permit.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it in Va. Code ' ' 62.1-44.15(8a and 8d) orders the Airport Authority, and, the Airport Authority agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Airport

Authority, and the Airport Authority voluntarily agrees, to pay a civil charge of \$24,000.00 in four quarterly payments, the first being due on March 1, 2004 and then thereafter on June 1, September 1 and December 1, 2004 in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, the Stafford Regional Airport Authority shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for the Stafford Regional Airport Authority.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Airport Authority, for good cause shown by the Airport Authority, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to the Airport Authority and dated October 7, 2002 and December 19, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Airport Authority admits the jurisdictional allegations. In addition, the Airport Authority neither admits nor denies the factual findings and conclusions of law contained herein.
4. The Airport Authority consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Airport Authority declares it has received fair and due process under the

Administrative Process Act, Va. Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the Airport Authority to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Airport Authority shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Airport Authority shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Airport Authority shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within twenty four hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and

the Airport Authority. Notwithstanding the foregoing, the Airport Authority agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Airport Authority.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Airport Authority from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Stafford Regional Airport Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Stafford Regional Airport Authority voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2003, by _____, who is
(name)

_____ of the Stafford Regional Airport Authority.
(title)

Notary Public

My commission expires: _____.

APPENDIX A SCHEDULE OF COMPLIANCE

Stafford Regional Airport Authority agrees to:

1. By August 1, 2003 submit to DEQ for review and approval, a revised plan and schedule for site restoration and repair of all the storm water conveyance structures and erosion prevention and the ongoing inspection and maintenance of the site. The plan and schedule shall include at a minimum, the following activities:

By September 19, 2003:

- a) submit a revised Storm Water Pollution Prevention Plan to include proper signatures and certifications;
- b) submit an overall site drainage plan to include sizes, locations, and materials for all drainage structures and features as well as the nomenclature for each of the storm water management basins and outfalls.

Within 30 days of receipt of funding but no later than December 1, 2003:

- a) mulch or otherwise stabilize bare areas to minimize ongoing erosion
- b) fill and stabilize gullies;
- c) stabilize risers and anti-vortex devices in both basins;
- d) re-evaluate, repair, and stabilize slope drains;
- e) re-evaluate, repair, and stabilize the paved flume;
- f) remove the silt from basins and convert to permanent design function; and repair and stabilize the blown-out dike in the southwest corner of the airport.

Upon approval by DEQ, this plan and schedule submitted pursuant to item 1 above, shall become a part of and enforceable under the terms of this Order.

2. By November 17, 2003 submit to DEQ, for review and approval, a Joint Permit Application and the associated \$2,400 application fee.
3. Upon issuance of the Permit, the Airport Authority shall comply with the mitigation of the wetland impacts under the terms of the Permit.
4. By November 30, 2003 establish final cover for the site.
5. Within 30 days of establishing final cover, file with NVRO, a Notice of Termination (NOT) for the VPDES General Permit.